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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/564,690

02/23/2007

Jochen Beck

19345

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272 7590 12/11/2009
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EXAMINER

LOPEZ, FRANK D

ART UNIT

PAPER NUMBER

3745

MAIL DATE

DELIVERY MODE

12/11/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/564,690

Applicant(s)

BECK ET AL.

Examiner

F. DANIEL LOPEZ

Art Unit

3745

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/F. DANIEL LOPEZ/
Primary Examiner, Art Unit 3745

Continuation of 3. NOTE: The independent claims have been amended to include first through fourth pivot joints. This is a new issue and new matter since there is no discussion of pivot joints in the specification. The triangle points connecting the vehicle body (4) to the actuators can be considered pivot joints, but the other end of the actuators appear to be fixedly connected to the loading shovel 6 (i.e. no pivot points)..

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant argues that the drawings only lack a detailed showing of the piston joints between the actuators and the working tool or shovel relative to the boom, and that it would be an obvious expedient that these connections are made by pivot joints. Applicant states that "merely a lack of presenting these minor details would not render the disclosure inadequate to one skilled in the art, since it is clear from the general structural description, that the shovel is tilted outwardly or inwardly by the tilting mechanism...and would not move vertically" (page 23 line 2-6). Applicant states that "Thus, in the absence of the pivot joints, which would be a natural or obvious expedient to be provided the inventive structure, the tilting mechanism would be inoperative inasmuch as the rod and cylinder would be fixed to the working tool or shovel in a fixed manner" (page 23 line 6-9).

The examiner contends that there is 2 problems with the specification, as discussed below. The examiner understands that the triangle points connecting the vehicle body (4) to the actuators can be considered pivot joints, but the other end of the actuators appear to be fixedly connected to the loading shovel 6 (i.e. no pivot points). Therefore, rather than the "minor details" of the piston joints not being shown, it would appear that the drawings show 2 pivot joints and 2 fixed joints.

The examiner disagrees with Applicant's labeling of the joints as "minor details". As Applicant states, without the pivot points the tilting mechanism is inoperative. Therefore, these details are not minor details, but critical to the operation of the invention. As such, they must be specifically disclosed or must be so well known in the prior art so that one of ordinary skill in this art would recognize from the disclosure the elements that are missing.

The prior art (e.g. Lech et al) has 2 actuators (50, e.g. fig 2A) tilting a shovel (28) relative to a boom (26). The actuators have pivot joints on both ends, connecting them to the boom and to the shovel. But, if the actuators is fluidly connected to a fluid source, so that one is extended while the other is retracted, the actuators would work against each other and the shovel would not move.

The examiner contends that there are 2 problems with the specification. The first problem is that the drawings show 2 pivot joints and 2 fixed joints, and as Applicant notes, the apparatus would not work with the fixed joints (i.e. they need pivot joints where the fixed joints are). The second problem is an overall explanation of how the actuators are connected between the boom and the shovel, to cause the shovel to tilt relative to the boom, is missing and not understood, even if all the joints were pivot joints. The 2 actuators can not be connected between the boom and the shovel the way prior art actuators were, because they would work against each other and the shovel would not move; making the system inoperative. Since neither the prior art nor the specification supplies the missing elements, to understand how the actuators are connected between the shovel and boom, especially with the 2 fixed joints; the specification is incomplete and any addition would be new matter.

The above arguments also apply to the lifting of the boom.

Applicant argues that claims 2 and 5 further limit claims 1 and 4, respectively, since claims 2 and 5 refer to relative sizes of the pressurization faces, and therefore the last 4 lines should not be deleted. The examiner agrees that the first 6 lines pertain to the relative sizes of the faces. But the last 4 lines claim that the pump is connected to the pressure chambers with each of the faces. Since this part has been claimed in claims 1 and 4, the last 4 lines are redundant and should therefore be deleted.